

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARSHALL CARTER, JR.,)	
)	
Plaintiff,)	8:04cv540
)	
vs.)	MEMORANDUM AND ORDER
)	
DANIELLE POWELLS, et al.,)	
)	
Defendants.)	

This matter is before the court on filing no. 17, the Motion to Dismiss filed by defendant-Danielle Powers, who is employed as a nurse at the Douglas County Correctional Center (“DCCC”) where the plaintiff, Marshall Carter, Jr., is an inmate. The plaintiff asserts federal civil rights claims pursuant to 42 U.S.C. § 1983, alleging that the defendant has failed or refused to administer psychiatric medication which has been diagnosed for the plaintiff. As a result, the plaintiff is experiencing psychiatric symptoms.

The defendant seeks dismissal of the complaint for failure to state a claim on which relief may be granted, Fed. R. Civ. P. 12(b)(6). The plaintiff resists the motion (filing no. 19). A motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) tests only the legal sufficiency of the plaintiff's complaint if the factual allegations in the complaint are accepted as true. Springdale Educ. Ass'n v. Springdale School Dist., 133 F.3d 649, 651 (8th Cir. 1998). See also Browning v. Clinton, 292 F.3d 235, 241-42 (D.C. Cir. 2002): “[W]e accept the plaintiff's factual allegations as true and construe the complaint ‘liberally,’ ‘grant[ing] plaintiff[] the benefit of all inferences that can be derived from the facts alleged,’ At the Rule 12(b)(6) stage, we do not assess ‘the truth of what

is asserted or determin[e] whether a plaintiff has any evidence to back up what is in the complaint.” (Citations omitted.) Thus, a claim should be liberally construed in the light most favorable to the plaintiff and should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Coleman v. Watt, 40 F.3d 255, 258 (8th Cir. 1994).

In light of that strict standard, filing no. 17, the Motion to Dismiss filed by defendant-Danielle Powers, is denied.

SO ORDERED.

DATED this 25th day of April, 2005.

BY THE COURT:

/s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
Chief District Judge